



Agenda Number: 4
Case Number: BA-90004/ZA-80145
Hearing Date: May 6, 2009

Appellant: Bosque Del Acres Neigh. Assoc.
9807 Loretta Dr. NW
Albuquerque, NM 87114

Agent: Ray Kolak
9807 Loretta Dr. NW
Albuquerque, NM 87114

Applicant: Dorothy Vasquez
10113 Bosque Cir. NW
Albuquerque, NM 87114

Agent:

Site Location: 10113 Bosque Cir. NW

Zone Designation: A-1 Rural Agricultural

Recommendation: Denial

VICINITY MAP

Summary: This request is an appeal of the Zoning Administrator's decision to approve a conditional use permit for commercial stables and a riding academy. The owner of the property has been granted authorization to board up to 18 horses on the site, as well as offer riding lessons and related activities. It was determined that the property met the criteria for approval as outlined in the zoning ordinance, based on eight findings and seven conditions (Attachment 3).

The appellant indicates that protective covenants of the neighborhood prohibit a "business of any kind", disallow a "noxious or offensive trade" resulting in an annoyance or nuisance to area residents, and mandate a 10,000-square foot limitation for each horse within the area.

Staff Contact: Brennon Williams, Zoning Administrator

Attachments:

1. Appeal application
2. Material presented in opposition to the appeal
3. Notices of Decision (Feb. 17, 2009, Dec. 16, 2008, & Nov. 21, 2008)
4. ZA application with provided site plan
5. Material presented in opposition to the ZA request
6. Material presented in support of the ZA request
7. Agency comments for ZA application
8. Site photographs, aerial photograph, zone atlas page

Ray Kolak, representative of the Bosque Dell Acres Neighborhood Association, appeals the Zoning Administrator's decision in approving a conditional use for commercial stables and a riding academy on Tract 12, Bosque Acres Subdivision, located at 10113 Bosque Cir. NW, zoned A-1, and containing approximately 1.98 acres. (B-14) (Original request submitted by Dorothy Vasquez)

BACKGROUND

The Request

The appellant is requesting that prior conditional use approval from the Zoning Administrator authorizing commercial stables and a riding academy from the subject site be overturned based on reported noncompliance with neighborhood covenants.

The Property

The site is located at 10113 Bosque Cir. NW, zoned A-1, and is approximately 1.98 acres in area. The property is currently developed with a single-family dwelling unit, multiple accessory buildings (stalls, barn, storage building), and specific areas of the property for equine activities.

The Hearing

The matter was originally scheduled to be heard at the November 2008 Zoning Administration hearing, but a site visit of the property on November 13, 2009, revealed that the provided sign was not posted. Additionally, the property owner – Dorothy Vasquez – indicated at the hearing that a deferral of the matter would be appreciated so that she could meet with area neighbors to discuss specific concerns that had recently been brought to her attention concerning the proposed activities, as well as meet with the Middle Rio Grande Conservancy District (MRGCD) to discuss access and use of the Corrales Acequia in connection with the riding academy.

Following confirmation of the posted sign, the request was heard at the December 9, 2008, public hearing. Ms. Vasquez presented the request. She testified that the existing development on the property was used to board 10 horses on the property, as well as offer seasonal horseback riding lessons and related seminars for equine health and training. She indicated that visitors to the site were generally from one of two categories: those who boarded their horses on the property and would stop in to check on and/or ride their animals along the nearby open space areas, or riding students coming to the property for scheduled lessons. She also mentioned that a designated off-street parking area (approximately 3,000 square feet) had been developed toward the east side of the property along Bosque Circle with sufficient area to accommodate multiple vehicles.

Ms. Vasquez also acknowledged that since the filing of her conditional use application she had become aware of concerns and questions raised by area residents and the county-recognized association regarding her request. She testified that she made several attempts to address the concerns by going door-to-door in the immediate area, providing written explanations of her activities, and attempts to meet both formally and informally with the association and/or its board members. When asked, she stated that these issues centered on the creation of dust and odors related to the request, the provision (or lack thereof) of a wall/fence to screen the property from adjacent lots, and unspecified "commercial aspects" thought to be detrimental to the neighborhood.

Ms. Vasquez also noted that she had provided additional information related to the request, including letters of support, photographs of the subject site and related property improvements, and additional justification to address the criteria for approval as outlined within the ordinance. She also stated that she had been in contact with the MRGCD concerning their submitted comments to the Zoning Administrator regarding their interest in the proposal. Two area residents spoke in support of the request, both indicating that the proposal seemed good for the neighborhood and consistent with the existing development in the neighborhood.

Several residents also spoke out in opposition to the request. Although many of these participants were concerned with issues of the proposal that were outside of the purview of the county, common matters of interest centered around possible negative affects of the request on the overall neighborhood; the creation of odors, vectors and dust; and noncompliance with neighborhood covenants. Additionally, many area property

owners sought further information on the safeguards that would be employed by the operator for inexperienced riders, as well as a limitation or prohibition on “free events” and “open house” promotions that had been put on by the business in the past.

Upon rebuttal, Ms. Vasquez addressed some of the aforementioned concerns, explained the experience of family members and participants involved with the program, and stated that her future business plans did not incorporate the promotions mentioned by the neighbors. After lengthy discussion during a resulting question-and-answer session, it was determined that a more definitive outline of these operational concerns would be beneficial for the request, and the matter was continued for 60 days.

The resulting public hearing at the February 2009 Zoning Administration meeting produced additional information from the applicant related to the issues discussed in December. Specifically, Ms. Vasquez showed that the fence separating her property from a concerned neighbor to the south had been made solid, provided additional details regarding site lighting and particular methods of business operation, and explained the inclusion of suggested procedures to address business complaints and ensure continued compliance with applicable county standards. Further discussion also clarified the types and frequency of “special” events proposed for the property related to the riding academy portion of the request, including clinics and contests, and concerns for adequate toilet provisions to meet anticipated need consistent with county health standards. As at the prior meeting, a few area residents spoke in favor of the request, citing a perceived cleanliness of the subject site, as well as a reported consistency with similar activities in the immediate area.

Members of the neighborhood were also in attendance to speak in opposition, again referencing concerns about possible changes to the area that would be detrimental to property values and in violation of covenants. However, it was requested that if the use were to be approved, conditions of approval be established to appropriately govern the site.

The Decision

The Zoning Administrator approved the request based on eight (8) findings and seven (7) conditions (Attachment 3). It was determined that the property was adequate in size and shape to accommodate the use of the property for commercial stables and a riding academy, that the property was developed in a way in which undue traffic congestion and hazards would be avoided, and that the use of the property for commercial stables and a riding academy was not injurious to the area. The conditions established limited the authorization period to just five (5) years, limited the number of horses on the site to no more than 18, and necessitated an annual submission from the operator regarding the number of complaints and efforts to resolve the complaints for inclusion with the corresponding file.

APPLICABLE REGULATIONS

Comprehensive Zoning Ordinance of Bernalillo County.

Section 7. A-1 Rural Agricultural Zone.

- A. The regulations set forth in this section or set forth in this ordinance, when referred to in this section, are the regulations in the A-1 Rural Agricultural Zone. The purposes of this zone are to preserve the scenic and recreational values in the National Forests and similar adjoining land, to safeguard the future water supply, to provide open and spacious development in areas remote from available public services, and to recognize the desirability of carrying on compatible agricultural operations and spacious home developments in areas near the fringes of urban development. The regulations provide for the protection of these important land uses, and are not intended to unduly restrict or regulate farming, or ranching operations.
- B. Use Regulations. A building or premises shall be used only for the following purposes. All uses customarily incidental to the building or premises shall be maintained on site.
 - 1. Prohibited Uses. The following uses are prohibited in this zone:
 - a. The open storage of inoperative vehicles or auto parts;
 - b. The open storage of trash or junk;
 - c. The open storage of large appliances;

- d. Any use not designated a permissive use or conditional use in this zone, unless otherwise authorized by this Code; or
 - e. Any use not recognized as customarily incidental to a permitted use in the zone.
2. Permissive Uses:
- a. Ranch, farm, dairy, and rural residential activities.
 - b. Display and sale of agricultural products including poultry or rabbits raised on the premises, and products incidental to the sales activity.
 - c. One single-family dwelling or H.U.D. Zone Code II manufactured home per lot of record.
 - d. Accessory building or structure customarily incidental to the above uses.
 - e. Recreational vehicle or boat storage in the rear yard when such recreational vehicle or boat is not to be used as accessory living quarters, and is not connected to utilities, other than temporarily to a source of electricity. Such units cannot be used for storage of goods, materials, or equipment other than those items considered to be a part of the unit or essential for its immediate use. Recreation vehicle used for dwelling purposes served only by electricity for lighting purposes, the use of such recreational vehicle shall be limited to a maximum of two weeks in any calendar year.
 - (1) In the event where rear yard access is not available, outside parking in the front yard is allowed, provided:
 - (a) The body of the recreational vehicle or boat is at least 11 feet from the front property line.
 - (b) No part of the unit extends onto the public right-of-way.
 - (c) A corner lot is always deemed to have reasonable access to the rear yard; a fence or wall is not necessarily deemed to prevent reasonable access.
 - f. Signs not exceeding 16 square feet in area per sign pertaining to the lease, hire or sale of a premises or sale of home-raised products, provided there shall be no more than one such sign per acre of lot area, and provided further that, if illuminated, the source of such illumination shall be nonoscillating and nonflashing.
 - g. Parking incidental to uses permitted in this zone, provided all vehicles parked are in operative condition.
 - h. Home occupation.
 - i. Concealed Wireless Telecommunications Facility, provided that it satisfies the requirements of section 22.5 of this ordinance.
 - j. Wireless Telecommunications Antenna located on a public utility structure, provided that it satisfies the requirements of section 22.5 of this ordinance.
 - k. Amateur Radio Antenna/Tower up to 65 feet as measured from grade.
3. Conditional Uses. The following uses may be permitted, if approved by the Zoning Administrator, in accordance with the procedures and under the conditions set out in the Administrative Section of this ordinance, with additional requirements deemed necessary to safeguard the best interest of the adjoining property, neighborhood and the community.
- a. Church and incidental facilities.
 - b. Day Care Center.
 - c. Family Day Care Home.
 - d. School.
 - e. Temporary festivals, circuses, carnivals or activities in a tent, provided that the use or activity meets the following requirements:
 - (1) The minimum lot size per use or activity shall be five acres.
 - (2) All required parking shall be located on the same site with the activity or use.
 - (3) The use or activity shall be at least two miles from the nearest conforming residential use.
 - (4) Prior approval of the proposed use or activity must be obtained from the County Sheriff, County Fire Department, County Environmental Health, County Public Works, City of Albuquerque Air Pollution Control, and Albuquerque Metropolitan Arroyo Flood Control Authority or their authorized representative.
 - (5) The hours of operation, shall be between 6:00 a.m. and 8:00 p.m. This includes the time of erection and dismantling.
 - (6) The use or activity shall be limited to three days in one calendar year.

- (7) No permanent structures shall be erected.
- (8) Temporary fencing may be erected, and shall be removed within 24 hours after the activity.
- f. Commercial stables, rodeo arenas, polo grounds, and riding academies.
- g. Privately or commercially operated recreational camps, lakes, swimming pools, and tennis courts.
- h. Guest ranch and incidental facilities, including stables, corrals, swimming pools, restaurants, incidental retail sales and services and personal services provided such ranches are located on sites containing not less than 20 acres.
- i. Hunting, fishing, ski resorts, and incidental facilities, provided they are located on sites containing not less than 20 acres.
- j. Kennels, animal hospitals, or the breeding, boarding or sale of dogs, cats, and birds.
- k. Commercial animal establishment and nonprofit animal facility.
- l. Real estate sales office in connection with a specific development for a period of not more than two years.
- m. Temporary sawmill and logging camp, when located not less than 1,000 feet from any public highway, dwelling, or public recreational area.
- n. Temporary storage building or yard for equipment, material, or activity incidental to a specific construction project but not to exceed one year, unless the time is extended by the Zoning Administrator.
- o. One mobile home per acre or per lot of record used as a one-family dwelling, provided that where two or more mobile homes are located on one lot, they must be clearly incidental to a use listed under Section 7.B.1.a. or as provided in Section 7.B.2.p.
- p. One mobile home for a three-year period in addition to an existing single-family dwelling or mobile home on a lot provided it complies with the following requirements:
 - (1) The mobile home may be used only by members of the immediate family for the purpose of providing assistance to those members of the family who are elderly, ill, or mentally or physically disabled as attested by a licensed physician.
 - (2) The mobile home shall be connected to water and sewage disposal facilities approved by the Department of Environmental Health.
 - (3) The mobile home must be placed on the property in conformance with the setback requirements and located at least 15 feet from any structures on the same or on adjoining property.
 - (4) Placement of a mobile home on the property will not seriously conflict with the character of the area or be detrimental to the values of surrounding properties.
- q. Mobile home used as a dwelling (with connections to any utilities) during construction of a dwelling on the same premises, provided such use shall be limited to a maximum period of 24 months.
- r. Amateur Radio Antenna/Tower 65 to 100 feet as measured from grade.
- s. Bed and Breakfast House.
- t. Park.

C. Height Regulations. Buildings and structures shall not exceed 26 feet or 2 1/2 stories in height, except as provided in the Supplementary Height and Area Regulation Section of this ordinance.

D. Area Regulations:

1. Minimum Lot Area and Lot Width. Every lot shall have an area of not less than one acre and an average width of not less than 150 feet. The minimum lot area for this zone shall be one (1) acre, however, if the lot is in Residential Area two (2) as designated in the Bernalillo County Southwest Area Plan the minimum acceptable lot size of each lot is as follows:
 - a. One acre if both municipal water and sewer services are available.
 - b. One and one-fourth acres if municipal water and sewer services are not available.
2. Setbacks. Minimum front yard setback shall be 25 feet, minimum side yard shall be ten feet, and the minimum rear yard shall be 25 feet, except as provided in the Supplementary Height and Area Regulations Section of this ordinance.

3. On any lot occupied by a mobile home, there shall be a side yard on each side of the mobile home of 15 feet in width and in no instance shall a mobile home be located nearer than 15 feet to an accessory building.

E. Parking Requirements. Off-street parking for all uses must be provided in accordance with the regulations set forth in the Off-Street Parking, Loading and Unloading Regulations Section of this ordinance.

Agency Comments

Comments received for this request (Attachment 7) from the Bernalillo County Building Department indicated that an open construction permit needed to be approved and closed. The Fire Department stated that fire prevention measures may be necessitated after review and approval of a future business license. Environmental Health noted in December 2008 that the applicant had met their previously noted concerns and had no adverse comment to the submittal.

INFORMATION SUBMITTED FOR THE APPEAL

The appellant indicates that there are existing covenants and neighborhood restrictions affecting the site that prohibit the operation of a business within the neighborhood, do not allow activities that may be considered an annoyance or nuisance to occur from properties in the neighborhood, and establish a 10,000-square foot area requirement for each horse on lots within the neighborhood.

ANALYSIS SUMMARY

CRITERIA	PROVIDED INFORMATION	STAFF ANALYSIS
Property is adequate in size & shape?	<ul style="list-style-type: none">- The subject property is 1.98 acres in area- Existing development on the site includes a single-family dwelling, multiple horse stalls, and a barn	<ul style="list-style-type: none">- The lot is almost double in area to that required by the zoning ordinance for A-1 properties- The existing development on the lot is allowed permissively; proposed use of the site is specifically enumerated by the ordinance and is considered to be an "expected" use from this zone
Property can be developed to avoid traffic congestion/hazards?	<ul style="list-style-type: none">- The existing access to the property from Bosque Circle is provided- A dedicated off-street parking area (approximately 3,000 sq. ft.) is provided on the site; accessible from existing right-of-way	<ul style="list-style-type: none">- The location and size of the existing off-street parking area will meet the applicable requirements of the ordinance for parking
Use will not be detrimental to surrounding properties?	<ul style="list-style-type: none">- The use of the property for commercial stables and a riding academy, with proper conditions limiting the size and intensity of the operation, is anticipated to occur from the A-1 zone	<ul style="list-style-type: none">- The A-1 zone permissively allows a variety of agriculture and rural residential activities similar in nature to the proposed use- The conditions of approval adequately address any portions of the proposal that may be deemed harmful and/or inconsistent with the established allowances

CONCLUSION

The zoning ordinance authorizes the Board of Adjustment to hear and determine appeals from the decisions of the Zoning Administrator in approving applications for conditional use permits outlined by the ordinance (Sec. 24.B.3.b.). For this request, however, the reasons presented for the appeal have no relevance or connection to the county's zoning regulations used for determination of proposal.

Simply stated, neighborhood covenants and restrictions are civil agreements between property owners that are not considered or enforced by government agencies for land use requests. These agreements, which typically focus on subjective "quality of life" issues, are often prepared and formalized without public input and the stringent review afforded to government legislation (i.e., law, ordinances, or codes) prior to community adoption. Because of these limitations and predictable problems with sufficient legality, covenants cannot be considered to carry the weight of law, but can be more accurately described as "understandings" between area owners and residents. If it is determined by property owners in a particular area that their neighborhood covenants have been violated, it is up to the property owners to pursue the issue.

There are unfortunate situations where certain neighborhood covenants can be stricter than – or even diametrically opposed to – governmental regulations. Stories concerning property owners who have converted their front yards into drought-tolerant xeriscapes in an effort to meet local water conservation measures, only to be sued because their neighborhood covenants necessitate grass lawns, are not unheard of in and around Bernalillo County. Similar types of neighborhood agreements may also be nonsensically outdated, mandating that properties within a particular subdivision be owned only by men considered to be in good standing with the local community; prohibiting unwed, unrelated persons from living in the same residence; or disallowing pick-up trucks to be parked in any driveway within the particular subdivision. In any case, the burden falls solely on the neighbors to determine if their covenants have been violated, and if so, whether or not it is an issue worthy and weighty enough for formal action.

New Mexico case law clearly attempts to establish specific guidelines for making determinations relative to land-use and zoning requests in an effort to minimize subjective decision making and provide for fair and impartial review of such proposals. The county's zoning ordinance establishes the criteria to be used for consideration of a conditional use request:

1. *That the site for the proposed use is adequate in size and shape to accommodate such use, and all yards, open spaces, walls and fences, parking, loading, landscaping, and other features required by this ordinance to adjust such use to the land use pattern in the neighborhood.*
2. *That the site for the proposed use can be developed in such manner that undue traffic congestion or hazards will not be created.*
3. *That the proposed use will have no adverse effect on the neighborhood or seriously conflict with the character of the area.*
4. *That any conditions are deemed necessary to protect the public health, safety, and general welfare . . .*
[Sec. 24.A.2.i.(1) thru (4)]

In order for a conditional use to be approved, it must be determined that the proposal meets these standards. If just one of the standards cannot be met, the county has no choice but to deny the proposal; however, if an applicant proves that the request meets the criterion, then the county is obligated to approve the proposal. For this matter, the latter is clearly the answer.

RECOMMENDATION:

Denial of BA-90004/ZA-80145, thereby upholding the previous determination of the Zoning Administrator.

Brennon Williams
Zoning Administrator